

BANKING DIVISION[187]

Notice of Intended Action

Proposing rule making related to state banks and providing an opportunity for public comment

The Iowa Division of Banking hereby proposes to amend Chapter 2, “Application Procedures,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 524.213.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 524.213, 524.312, 524.314, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509 and section 524.802A as enacted by 2022 Iowa Acts, Senate File 586, section 73.

Purpose and Summary

This proposed rule making addresses several issues identified during the Division’s most recent comprehensive review of administrative rules, completed in 2022 pursuant to Iowa Code section 17A.7(2), and makes several conforming changes based on amendments to Iowa Code chapter 524 that were adopted in 2022 Iowa Acts, Senate File 586.

The proposed rule making amends rule 187—2.2(17A,524), regarding the application for conversion from a national bank to a state bank, and rule 187—2.3(17A,524), regarding mergers, to make the use of the term “state bank” consistent throughout both rules. A proposed amendment to rule 187—2.5(17A,524) updates the name of an application to reflect the statutory language of a “change of location of the principal place of business” of a state bank and implements the new requirement, enacted by Senate File 586, section 36, for the Superintendent of Banking to approve or disapprove an application within 90 days. The proposed amendment to rule 187—2.7(17A,524) adds language regarding the manner in which the Superintendent must make a decision on applications to renew, amend, or restate the articles of incorporation of a state bank that mirrors similar language in the other application rules found in Chapter 2.

The Division also proposes to adopt a new rule establishing an application process for state banks that wish to engage in new or innovative electronic activities pursuant to new Iowa Code section 524.802A. This new Iowa Code section expressly authorizes the Superintendent to adopt administrative rules to implement the new provisions, and the proposed rule establishes a process for review by the bank’s board of directors, criteria for a formal application, a process for the Superintendent to approve or disapprove of applications, and other relevant factors for applicants to consider.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on November 8, 2022. Comments should be directed to:

Zak Hingst
Iowa Division of Banking
200 East Grand Avenue, Suite 300
Des Moines, Iowa 50309-1827
Email: zak.hingst@idob.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 187—2.2(17A,524) as follows:

187—2.2(17A,524) Conversion of national bank into state bank.

2.2(1) Application. A national bank desiring to become a ~~state-chartered~~ state bank should first meet with the superintendent to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

2.2(2) Examination and investigation. The superintendent may conduct an examination or investigation of the national bank as deemed necessary.

2.2(3) Decision. The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant.

2.2(4) Corporate documents. If approval is granted, articles of conversion with a plan of conversion attached shall be delivered to the secretary of state for filing and recording.

2.2(5) Commencement of business as ~~state-chartered~~ state bank. The conversion shall be effective as of the date of filing of articles of conversion in the office of the secretary of state unless a later date is specified in the articles of conversion. The superintendent’s Authorization To Do Business as a ~~state-chartered~~ state bank will be issued to be effective on the date of conversion.

2.2(6) Resulting ~~state-chartered~~ state bank. The resulting state bank shall submit the oath of directors, list of shareholders, and certificate of elections and appointments to the superintendent on forms to be provided by the superintendent. The oath of directors is to be signed prior to the first meeting of the board of directors following the effective date of the conversion. The list of shareholders is to be completed as of the effective date of conversion.

This rule is intended to implement Iowa Code sections 524.1410 and 524.1413 to 524.1415.

ITEM 2. Amend rule 187—2.3(17A,524) as follows:

187—2.3(17A,524) Merger or purchase and assumption.

2.3(1) Definition. For purposes of this rule, the term “merger” means a merger in which the resulting bank is a ~~state-chartered~~ state bank.

2.3(2) Application. State banks or national and state banks desiring to merge or a state bank desiring to purchase the assets and assume the liabilities of another bank should first meet with the superintendent to discuss the proposal. An application and supplementary forms may be obtained for submission to the superintendent.

2.3(3) ~~State-chartered~~ State bank as seller. In the case of a purchase and assumption, if the bank being acquired is a state bank, appropriate forms and instructions for the voluntary liquidation of the bank may be obtained from the superintendent.

2.3(4) Examination and investigation. The superintendent may conduct an examination or investigation as deemed necessary.

2.3(5) Decision. The superintendent shall approve or deny the application within 90 days after the purchase and assumption application has been accepted for processing and within 180 days after the merger application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations.

~~**2.3(6) Cash-out merger.** Rescinded IAB 10/10/18, effective 11/14/18.~~

This rule is intended to implement Iowa Code sections 524.1401 to 524.1405.

ITEM 3. Amend rule 187—2.5(17A,524) as follows:

187—2.5(17A,524) Change of location of principal place of business or bank office.

2.5(1) Application. A state bank desiring to relocate its principal place of business or a bank office shall submit to the superintendent an “Application to ~~Move Main Office or Bank Office,~~” Relocate the Principal Place of Business” or “Application to Relocate a Bank Office,” which is are available on the division’s website or upon request.

2.5(2) Investigation. The superintendent may conduct an investigation as deemed necessary.

2.5(3) Decision. The superintendent shall approve or deny the application within ~~180~~ 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the superintendent shall issue the appropriate authorizations for the conduct of business at the new location.

This rule is intended to implement Iowa Code section 524.312.

ITEM 4. Amend subrule 2.7(4) as follows:

2.7(4) Decision. ~~Rescinded IAB 10/10/18, effective 11/14/18. The superintendent shall approve or deny the application within 90 days after the application has been accepted for processing. The decision by the superintendent shall be conveyed in writing to the applicant. If the application is approved, the renewed, amended, or restated articles of incorporation will be approved and forwarded to the secretary of state for filing and recording. Upon filing such articles, the secretary of state will return the original to the state bank and will also issue a certificate to the state bank indicating the date the filing was effective. Thereafter, the state bank will operate in accordance with its renewed, amended, or restated articles of incorporation.~~

ITEM 5. Adopt the following new rule 187—2.18(17A,524):

187—2.18(17A,524) New or innovative electronic activities.

2.18(1) Scope. Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586, authorizes a state bank to engage in new or innovative electronic activities that are part of the business of banking. When considering a proposal to engage in new or innovative electronic activities, the superintendent will consider whether the activity is expressly authorized for state banks under Iowa Code chapter 524, whether the activity is the functional equivalent or a logical extension of any activity authorized for state banks, whether the state bank has the expertise necessary to understand and manage the activity and the associated risks, and whether the activity presents similar risks to those state banks already assume.

2.18(2) Board responsibilities. The board of directors of a state bank considering engaging in a new or innovative electronic activity shall first evaluate the risks associated with the proposed new or innovative electronic activity and ensure that the state bank conducts the proposed new or innovative electronic activities in compliance with Iowa Code section 524.802A(3) as enacted by 2022 Iowa Acts, Senate File 586.

2.18(3) Application. A state bank desiring to engage in new or innovative electronic activities should first meet with the superintendent to discuss the proposed electronic activities. After meeting with the superintendent, a state bank proposing to engage in new or innovative electronic activities shall submit a formal proposal to the superintendent that shall, at a minimum, contain the following information:

a. A description of the proposed new or innovative electronic activities, including how the proposed electronic activities align with the strategy and business objectives of the state bank.

b. A description of any state or federal laws and regulations expected to apply to the proposed electronic activities. Examples: compliance (terms, conditions, disclosures), Bank Secrecy Act, federal securities laws.

c. A description of the state bank's corporate governance process that will oversee the proposed electronic activities, including ongoing monitoring to identify and handle any problems or incidents that may arise.

d. A description of the resources and management information systems necessary to oversee the electronic activities.

e. Due diligence materials, including risk assessments (e.g., operational risk, liquidity risk, strategic risk, compliance risk) and information on third-party relationships.

f. A description of any other licenses or approvals required from any regulatory authority to engage in the proposed new or innovative electronic activities.

g. A description of the capital position of the state bank in relation to the risks associated with the proposed new or innovative electronic activities.

h. A description of the state bank's exit strategy for the proposed new or innovative electronic activity if the activity proves unsuccessful.

2.18(4) Investigation. The superintendent may investigate as deemed necessary.

2.18(5) Decision. The superintendent shall approve or deny the application, and the decision by the superintendent shall be conveyed in writing to the applicant.

2.18(6) Other relevant factors. The following provisions apply to a state bank seeking approval to engage in new or innovative electronic activities pursuant to Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586:

a. The state bank shall contact its primary federal regulator to determine any federal legal requirements that may apply to the proposed activity and the permissibility of the activity under applicable federal law.

b. Upon approval to engage in a new or electronic activity, a state bank that shares any electronic space, including a co-branded website, with a bank subsidiary, affiliate, or any other third party, must take reasonable steps to clearly, conspicuously, and understandably distinguish between the products and services offered by the state bank and those offered by the state bank's subsidiary, affiliate, or any other third party.

This rule is intended to implement Iowa Code section 524.802A as enacted by 2022 Iowa Acts, Senate File 586.